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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

ANNUAL AUDITED REPORT  
FORM X-17A-5  
PART III

BB 3/16

|                                                     |                  |
|-----------------------------------------------------|------------------|
| OMB APPROVAL                                        |                  |
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Information Required of Brokers and Dealers Pursuant to Section 17 of the  
Securities Exchange Act of 1934 and Rule 17a-5 Thereunder

REPORT FOR THE PERIOD BEGINNING 01/01/04 AND ENDING 12/31/04  
MM/DD/YY MM/DD/YY

A. REGISTRANT IDENTIFICATION

NAME OF BROKER-DEALER: BNY ASSOCIATED INCORPORATED, dba  
BNY Capital Markets, Inc.

ADDRESS OF PRINCIPAL PLACE OF BUSINESS: (Do not use P.O. Box No.)

One Wall street, 18th floor  
(No. and Street)

New York NY 10286  
(City) (State) (Zip Code)

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT IN REGARD TO THIS REPORT  
John M. Gavin, Jr. (212) 635-1386  
(Area Code - Telephone Number)

B. ACCOUNTANT IDENTIFICATION

INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this Report\*

Ernst & Young LLP  
(Name - if individual, state last, first, middle name)  
5 Times Square New York NY 10036  
(Address) (City) (State) (Zip Code)

CHECK ONE:

- ☒ Certified Public Accountant  
☐ Public Accountant  
☐ Accountant not resident in United States or any of its possessions.

PROCESSED

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\*Claims for exemption from the requirement that the annual report be covered by the opinion of an independent public accountant must be supported by a statement of facts and circumstances relied on as the basis for the exemption. See Section 240.17a-5(e)(2)

SEC 1410 (06-02)

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# OATH OR AFFIRMATION

I, John M. Gavin, Jr, swear (or affirm) that, to the best of my knowledge and belief the accompanying financial statement and supporting schedules pertaining to the firm of BNY Capital Markets, Inc, as of December 31, 20 04, are true and correct. I further swear (or affirm) that neither the company nor any partner, proprietor, principal officer or director has any proprietary interest in any account classified solely as that of a customer, except as follows:

**Stacey Nussbaum**  
**Notary Public, State of New York**  
**No. 02NU6094505**  
**Qualified in New York County**  
**Commission Expires June 23, 2007**

John M. Gavin Jr  
Signature  
Chief Financial Officer  
Title

Stacey Nussbaum  
Notary Public

This report \*\* contains (check all applicable boxes):

- ☒ (a) Facing Page.
- ☒ (b) Statement of Financial Condition.
- ☐ (c) Statement of Income (Loss).
- ☐ (d) Statement of Changes in Financial Condition.
- ☐ (e) Statement of Changes in Stockholders' Equity or Partners' or Sole Proprietors' Capital.
- ☐ (f) Statement of Changes in Liabilities Subordinated to Claims of Creditors.
- ☐ (g) Computation of Net Capital.
- ☐ (h) Computation for Determination of Reserve Requirements Pursuant to Rule 15c3-3.
- ☐ (i) Information Relating to the Possession or Control Requirements Under Rule 15c3-3.
- ☐ (j) A Reconciliation, including appropriate explanation of the Computation of Net Capital Under Rule 15c3-3 and the Computation for Determination of the Reserve Requirements Under Exhibit A of Rule 15c3-3.
- ☐ (k) A Reconciliation between the audited and unaudited Statements of Financial Condition with respect to methods of consolidation.
- ☒ (l) An Oath or Affirmation.
- ☐ (m) A copy of the SIPC Supplemental Report.
- ☐ (n) A report describing any material inadequacies found to exist or found to have existed since the date of the previous audit.

**\*\*For conditions of confidential treatment of certain portions of this filing, see section 240.17a-5(e)(3).**

STATEMENT OF FINANCIAL CONDITION

BNY Capital Markets, Inc.

(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

December 31, 2004

with Report of Independent Registered Public Accounting Firm

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Statement of Financial Condition

December 31, 2004

**Contents**

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## Report of Independent Registered Public Accounting Firm

Board of Directors of  
BNY Capital Markets, Inc.

We have audited the accompanying statement of financial condition of BNY Capital Markets, Inc. (the "Company") as of December 31, 2004. This statement of financial condition is the responsibility of the Company's management. Our responsibility is to express an opinion on this statement of financial condition based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement of financial condition is free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of financial condition, assessing the accounting principles used and significant estimates made by management, and evaluating the overall statement of financial condition presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the statement of financial condition referred to above present fairly, in all material respects, the financial position of BNY Capital Markets, Inc. at December 31, 2004, in conformity with accounting principles generally accepted in the United States.

*Ernst & Young LLP*

February 28, 2005

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Statement of Financial Condition

December 31, 2004

|                                                                                                                           |                  |                       |
|---------------------------------------------------------------------------------------------------------------------------|------------------|-----------------------|
| <b>Assets</b>                                                                                                             |                  |                       |
| Cash                                                                                                                      |                  | \$ 2,326,927          |
| Receivable from brokers, dealers and clearing organizations (Note 3)                                                      |                  | 53,546,436            |
| Securities owned, at fair value:                                                                                          |                  |                       |
| State and municipal obligations                                                                                           | \$ 84,540,170    |                       |
| Corporate debt                                                                                                            | 82,757,944       |                       |
| U.S. Government obligations                                                                                               | 47,002,071       |                       |
| Equities                                                                                                                  | 22,645,436       |                       |
| Commercial paper                                                                                                          | <u>5,369,988</u> | 242,315,609           |
| Securities owned, not readily marketable                                                                                  |                  | 56,557                |
| Securities purchased under agreements to resell                                                                           |                  | 1,760,938             |
| Securities borrowed (Note 8)                                                                                              |                  | 1,308,216             |
| Accrued interest receivable                                                                                               |                  | 1,795,556             |
| Fees receivable                                                                                                           |                  | 5,550,526             |
| Receivable from affiliate (Note 6)                                                                                        |                  | 501,786               |
| Furniture, equipment and leasehold improvements at cost (net of accumulated depreciation and amortization of \$2,260,453) |                  | 1,831,773             |
| Goodwill                                                                                                                  |                  | 30,856,356            |
| Deferred tax asset (Note 5)                                                                                               |                  | 1,277,107             |
| Other assets                                                                                                              |                  | <u>3,792,912</u>      |
| Total assets                                                                                                              |                  | <u>\$ 346,920,699</u> |
| <b>Liabilities and shareholder's equity</b>                                                                               |                  |                       |
| <b>Liabilities:</b>                                                                                                       |                  |                       |
| Short-term borrowings                                                                                                     |                  | \$ 20,000,000         |
| Securities sold, not yet purchased, at fair value:                                                                        |                  |                       |
| U.S. Government obligations                                                                                               | 42,677,912       |                       |
| Equities                                                                                                                  | 2,220,079        |                       |
| Corporate debt                                                                                                            | <u>1,251,050</u> | 46,149,041            |
| Securities loaned (Note 8)                                                                                                |                  | 600,216               |
| Payable to Parent (Note 6)                                                                                                |                  | 59,615,049            |
| Payable to Brokers-Dealers                                                                                                |                  | 27,109                |
| Accrued compensation and other expenses                                                                                   |                  | 24,649,964            |
| Deferred tax liability (Note 5)                                                                                           |                  | 340,681               |
| Other liabilities                                                                                                         |                  | <u>2,060,907</u>      |
|                                                                                                                           |                  | <u>153,442,967</u>    |
| Subordinated liabilities (Note 9)                                                                                         |                  | <u>50,000,000</u>     |
| Total liabilities                                                                                                         |                  | <u>203,442,967</u>    |
| <b>Shareholder's equity:</b>                                                                                              |                  |                       |
| Common stock, \$.10 par value—1,000 shares authorized;                                                                    |                  |                       |
| 105 shares issued and outstanding                                                                                         |                  | 10                    |
| Additional paid-in capital                                                                                                |                  | 51,180,932            |
| Retained earnings                                                                                                         |                  | <u>92,296,790</u>     |
| Total shareholder's equity                                                                                                |                  | <u>143,477,732</u>    |
| Total liabilities and shareholder's equity                                                                                |                  | <u>\$ 346,920,699</u> |
| <i>See accompanying notes.</i>                                                                                            |                  |                       |

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Notes to Statement of Financial Condition

December 31, 2004

**1. Organization**

BNY Capital Markets, Inc. (the "Company"), a wholly-owned subsidiary of The Bank of New York Company, Inc. (the "Parent"), is a registered broker-dealer with the Securities and Exchange Commission (the "SEC") and is a member of the National Association of Securities Dealers, Inc. (the "NASD"). The Company is also a member of the Municipal Securities Rule Making Board and the Securities Investor Protection Corporation. The Company has been authorized by the Federal Reserve Board (the "Board") to underwrite and deal in all types of debt and equity securities.

The Company provides a wide range of financial services. Its businesses include securities underwriting, distribution and trading. The Company also performs various corporate finance advisory activities, such as merger & acquisition and project finance. The Company conducts trading activity with its customers on both a principal and agency basis. Securities products offered and sold by the Company are not insured by the Federal Deposit Insurance Corporation, are not deposits or other obligations of the Parent, are not guaranteed by the Parent, and are subject to investment risks including the possibility of loss of principal invested.

The Company clears all of its transactions through an affiliate broker-dealer on a fully disclosed basis.

**2. Summary of Significant Accounting Policies**

**Use of Estimates**

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect amounts reported in the financial statements and accompanying notes. Management believes that the estimates utilized in the financial statements are reasonable and prudent. Actual results could differ from these estimates.

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Notes to Statement of Financial Condition (continued)

**2. Summary of Significant Accounting Policies (continued)**

**Principal Transactions**

Securities transactions and related revenues and expenses are recorded on a trade date basis. Securities owned and securities sold, not yet purchased, including derivative contracts held for trading purposes, are stated at market value with related changes in unrealized appreciation or depreciation reflected in principal transactions on the statement of income. Market value is generally based on listed market prices. If listed market prices are not available, fair value is determined based on other relevant factors, including broker or dealer price quotations.

Securities sold, not yet purchased, represent obligations to deliver specified securities at predetermined prices. The Company is obligated to acquire the securities sold, not yet purchased at prevailing market prices in the future to satisfy these obligations.

**Securities Purchased Under Agreements to Resell and Securities Sold Under Agreements of Repurchase**

Securities purchased under agreements to resell and securities sold under agreements to repurchase are treated as collateralized financing transactions and are carried at amounts at which the securities will be subsequently resold or repurchased plus accrued interest. It is the Company's policy to take possession or control of securities purchased under agreements to resell. The Company is required to provide securities to counterparties in order to collateralize repurchase agreements. The Company minimizes credit risk associated with these activities by monitoring credit exposure and collateral values on a daily basis and requiring additional collateral to be deposited or returned when deemed appropriate.

In the normal course of business, the Company obtains securities under resale agreements on terms which, permit it to repledge or resell the securities to others. At December 31, 2004, the Company obtained approximately \$1,760,000 of securities on such terms, substantially all of which have been either pledged or otherwise transferred to others in connection with the Company's commitments under proprietary short sales.

Interest is accrued on repurchase and resale contract amounts, securities borrowed and loaned transactions and securities owned, and is included in accrued interest receivable/payable on the statement of financial condition and the respective interest balances on the statement of income.

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Notes to Statement of Financial Condition (continued)

**2. Summary of Significant Accounting Policies (continued)**

**Securities Borrowed and Securities Loaned**

Securities borrowed and securities loaned result from transactions with other brokers and dealers or financial institutions and are recorded at the amount of cash collateral advanced or received. The Company monitors the market value of securities loaned on a daily basis, with additional collateral obtained or refunded as necessary.

**Goodwill**

Under Financial Accounting Standards ("SFAS") No. 142, *"Goodwill and Other Intangible Assets,"* goodwill is evaluated for impairment annually. For the year ended December 31, 2004, no impairment expense was recorded.

**Income Taxes**

The Company is included in the consolidated federal and combined state and local income tax returns filed by the Parent. Income taxes are calculated as if the Company filed on a separate return basis, and the amount of current tax expense or benefit calculated is either remitted to or received from the Parent, pursuant to a tax sharing agreement between the Parent and the Company.

**Employee Benefit Plans – Stock Options**

Certain employees of the Company participate in the Parent's stock option award plans. The Company follows the prospective method of fair value accounting under SFAS No. 123, *"Accounting for Stock-Based Compensation"* as amended by SFAS No. 148, *"Accounting for Stock-Based Compensation- Transition and Disclosure"* for these stock options.

**Long Lived Assets**

Furniture and equipment and leasehold improvements are carried at cost, net of accumulated depreciation and amortization. Furniture and equipment are depreciated using the straight-line method over the respective useful lives of the asset, generally ranging from four to ten years. Leasehold improvements are amortized over the lesser of fifteen years or the term of the lease.

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Notes to Statement of Financial Condition (continued)

**3. Receivable from Brokers, Dealers and Clearing Organizations**

Amounts receivable from brokers, dealers and clearing organizations at December 31, 2004 consist of the following:

|                                        |                     |
|----------------------------------------|---------------------|
| Receivable from clearing broker        | \$53,071,639        |
| Receivable from clearing organizations | 474,797             |
| Total                                  | <u>\$53,546,436</u> |

**4. Short-Term Borrowings**

The Company maintains uncommitted lines of credit totaling \$200,000,000 with two unrelated financial institutions and an uncommitted line of credit in the amount of \$10,000,000 with the Parent, which have no expiration dates. In addition, the Company maintains an additional uncommitted line of credit with an unrelated financial institution that does not have a maximum principal borrowing amount. In each case, these lines of credit are used to finance the Company's proprietary trading business. As of December 31, 2004, the Company has overnight borrowings of \$20,000,000 outstanding with unrelated financial institutions under these lines of credit at a weighted average rate of 2.5%.

**5. Income Taxes**

The deferred income taxes reflect the tax effects of temporary differences between the financial reporting and tax bases of assets and liabilities. The Company has a gross deferred tax asset of \$6,643,409 and a gross deferred tax liability of \$5,706,983 at December 31, 2004. The deferred tax asset is primarily attributable to the federal benefit of state and local taxes and the deferred tax liability is attributable to amortization of intangibles. The Company's effective tax rate differs from the federal statutory rate mainly as a result of the effect of state and local taxes.

**6. Related Party Transactions**

The Company conducts transactions in the ordinary course of business with the Parent and its affiliates. During the year ended December 31, 2004, such transactions included loan syndications, purchases of securities under agreements to resell, sales of securities under agreements to repurchase, securities borrowing, securities lending and deposits.

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Notes to Statement of Financial Condition (continued)

**6. Related Party Transactions (continued)**

As of December 31, 2004, amounts payable to Parent consist of the following:

|                                                                           |                      |
|---------------------------------------------------------------------------|----------------------|
| Income taxes payable ( <i>Note 5</i> )                                    | \$ 28,747,761        |
| Benefit plan obligations ( <i>Note 7</i> )                                | 4,119,484            |
| Accrued interest payable on<br>subordinated liabilities ( <i>Note 9</i> ) | <u>26,747,804</u>    |
|                                                                           | <u>\$ 59,615,049</u> |

In addition, the Company had unrestricted cash of \$1,205,339 and receivables of \$501,786 with an affiliate of the Parent.

The Company entered into a cancelable lease agreement with an affiliate of the Parent dated September 3, 1996.

On deposit at the affiliated clearing broker are U.S. Government obligations, with a market value of approximately \$5,000,000, which are included in securities owned.

As of December 31, 2004, stock borrowed from affiliates had a contract value of \$1,308,216 and stock loaned to affiliates had a contract value of \$600,216.

**7. Employee Benefit Plans**

The Company's employees are covered under the Parent's benefit plans. The Parent's Defined Benefit Retirement Plan covers substantially all full time employees. The Company's employees are also covered under the Parent's Employee Stock Ownership Plan and the Employee Savings Plan. In addition, certain employees of the Company may participate in the Stock Option Awards Plans.

**BNY Capital Markets, Inc.**  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

**Notes to Statement of Financial Condition (continued)**

**8. Financial Instruments**

**Fair Value**

Substantially all of the Company's financial instruments are carried at fair value or amounts approximating fair value. Assets, including cash, securities owned, securities purchased under agreements to resell and certain receivables are carried at fair value or contracted amounts which approximate fair value.

Similarly, liabilities including securities sold, not yet purchased, securities sold under agreements to repurchase, liabilities subordinated to claims of general creditors and certain payables are carried at fair value or contracted amounts approximating fair value.

**Collateral**

The Company enters into collateralized reverse repurchase and repurchase agreements and securities borrowing and lending transactions that may result in credit exposure in the event the counterparty to the transaction is unable to fulfill its contractual obligations. The Company minimizes credit risk associated with these activities by monitoring counterparty credit exposure and collateral values on a daily basis and requiring additional collateral to be deposited with or returned by the Company when deemed necessary.

At December 31, 2004, the fair value of securities received under the stock borrow arrangements is \$1,197,556, of this amount, the Company has pledged securities delivered under stock loan agreements with fair value of \$566,251.

**Derivative Financial Instruments**

Derivatives are financial instruments, which include option, futures, and forward contracts, whose value is based upon an underlying asset, index or reference rate. A derivative contract may be traded on an exchange or over-the-counter. Exchange-traded derivatives are standardized and include option and futures contracts. The Company records its derivative activities at fair value and unrealized gains and losses are recognized currently.

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Notes to Statement of Financial Condition (continued)

**8. Financial Instruments (continued)**

The Company is subject to market risks arising from unfavorable changes in interest rates, foreign currency exchange rates or the market values of the securities underlying the instruments. The Company enters into transactions in option and futures contracts with off-balance sheet risk in order to reduce its own exposure to market and interest rate risk, and in connection with its normal proprietary trading activities.

The credit risk associated with these contracts results from the potential inability of counterparties to meet the terms of their contracts and is typically limited to the cost of replacing all contracts on which the Company has recorded an unrealized gain. For exchange-traded contracts, the clearing organization acts as the counterparty to specific transactions and, therefore, bears the risk of delivery to and from counterparties.

At December 31, 2004, the Company held no derivative financial instruments.

**9. Liabilities Subordinated to Claims of General Creditors**

The Company has a subordinated credit facility in the amount of \$250,000,000 with the Parent. As of December 31, 2004, the Company has \$50,000,000 outstanding on this facility, bearing interest of Libor + 150bps per annum. The note is scheduled to mature on February 28, 2007.

This loan is subordinated to the claims of general creditors. The NASD has approved this subordinated loan to constitute part of the Company's net capital under the Uniform Net Capital Rule. The subordinated loan may be repaid only if, after giving effect to such repayment, the Company continues to meet its minimum net capital requirements.

**10. Net Capital Requirements**

The Company is subject to the Uniform Net Capital requirements of the Securities and Exchange Commission (the "Commission") under Rule 15c3-1. The Commission's requirements also provide that equity capital may not be withdrawn or cash dividends paid if certain minimum net capital requirements are not met. The Company computes its net capital in accordance with the aggregate indebtedness method of this Rule. At December 31, 2004, the Company had net capital of \$132,348,230 which was \$125,195,301 in excess of the amount required to be maintained at that date. The Company's ratio of aggregate indebtedness to net capital was .81 to 1.

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Notes to Statement of Financial Condition (continued)

**11. Off-Balance Sheet Credit Risk**

In the normal course of business, the Company's activities involve the execution of securities transactions. These activities may expose the Company to off-balance sheet credit risk in the event the counterparty is unable to fulfill its contracted obligation. The Company conducts business with brokers and dealers that are members of the major securities exchanges. The Company monitors the credit standing of such brokers and dealers.

The Company's securities activities are transacted on a delivery versus payment basis. In delivery versus payment transactions, the Company is exposed to the risk of loss in the event of the counterparty's inability to meet the terms of their contracts. Should the counterparty fail to perform, the Company may be required to complete the transaction at prevailing market prices. Trades pending at December 31, 2004 were settled without an adverse effect on the Company's financial statements taken as a whole.

Subsequent market fluctuations of securities sold, but not yet purchased may require purchasing these securities at prices which differ from values reflected on the statement of financial condition.

The Company's exposure to credit risk can be directly impacted by volatile securities markets which may impair the ability of counterparties to satisfy their contractual obligations. The Company seeks to control its credit risk through a variety of reporting and control procedures and by applying uniform credit standards maintained for all activities with credit risk.

**12. Commitments and Contingencies**

The Company has obligations under operating leases with unrelated parties. The lease agreements have initial noncancelable terms in excess of one year. Aggregate annual rentals for office space at December 31, 2004 are:

|            | <b>Gross Rental</b> | <b>Sub-Lease<br/>Rental</b> | <b>Net<br/>Obligation</b> |
|------------|---------------------|-----------------------------|---------------------------|
| 2005       | \$1,146,809         | \$ (686,790)                | \$ 460,019                |
| 2006       | 1,146,809           | (200,790)                   | 946,019                   |
| 2007       | 1,146,809           | (200,790)                   | 946,019                   |
| 2008       | 1,183,784           | (206,388)                   | 977,396                   |
| 2009       | 1,008,256           | (214,176)                   | 794,080                   |
| Thereafter | 1,530,412           | (339,112)                   | 1,191,300                 |
| Total      | <u>\$7,162,879</u>  | <u>\$ (1,848,046)</u>       | <u>\$ 5,314,833</u>       |

BNY Capital Markets, Inc.  
(A wholly-owned subsidiary of The Bank of New York Company, Inc.)

Notes to Statement of Financial Condition (continued)

**12. Commitments and Contingencies (continued)**

Included in the 2005 sub-lease rental is \$486,000 in projected rental income from an affiliate of the Parent pursuant to a lease contract which expires at the end of 2005 and is renewable at the affiliate's option.

The Company may be involved in litigation arising in the normal course of business. At December 31, 2004, no litigation was pending against the Company. In addition, management is not aware of any unasserted claims or assessments against the Company.